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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

**Douglas Wilkerson, Joshua Luna,
Ryan Adverderada,**

Plaintiffs,

vs.

Expert Global Solutions, Inc.,
formerly known as **APAC Customer**
Services, Inc., a Delaware Corporation
duly licensed to do business in the State
of Arizona;

Defendants.

Case No.:

Complaint

(Unpaid Wages; Unpaid Overtime)

Plaintiffs, Douglas Wilkerson, Joshua Luna, and Ryan Adverderada, by and
through their undersigned counsel, submit the following claims:

I.

Parties Jurisdiction and Venue

1. Plaintiff Wilkerson is a resident of Maricopa County, Arizona.
2. Plaintiff Luna is a resident of Maricopa County, Arizona.
3. Plaintiff Adverderada is a resident of Maricopa County, Arizona.

1 12. While employed as a Team Leader, Plaintiff Wilkerson worked with a
2 group of between twenty and thirty five other customer assistance agents who were
3 assigned to his team.
4

5 13. Plaintiff Wilkerson was strictly prohibited from ever exercising
6 independent decision making or discretion while performing his job duties as a
7 Team Leader
8

9 14. Plaintiff Wilkerson was unable to hire, fire or otherwise discipline
10 subordinate employees or customer service agents assigned to his team.
11

12 15. While employed as a Team Leader, Plaintiff Wilkerson was paid on a
13 salary basis for all hours that he worked including all hours worked in excess of
14 forty per week.
15

16 16. While employed as a Team Leader, Plaintiff Wilkerson was paid an
17 annual salary of \$28,000.00 which translated to an hourly rate of \$13.46 per hour.
18

19 17. As a Team Leader, Plaintiff Wilkerson typically worked between fifty
20 five and sixty hours per week.
21

22 18. Plaintiff Wilkerson was never paid overtime for hours worked in
23 excess of forty per week.
24

25 19. At all times during his employment with the Defendant, Plaintiff
26 Wilkerson remained “non-exempt” under the “Fair Labor Standards Act”, 29
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1 U.S.C. 201 *et seq.*, (hereinafter “FLSA”) which mandated that he be paid time-and-
2 one-half of his hourly rate for all hours worked over forty (40) per week.

3
4 20. The Defendant is an enterprise engaged in interstate commerce as
5 defined by 29 U.S.C. 206(a).

6
7 21. Upon information and belief, the Defendant is an enterprise whose
8 annual gross volume of sales made or business done is not less than \$500,000.

9
10 22. As such, the Defendant is a “covered enterprise” as defined by 29
11 U.S.C. 203(s) of the Fair Labor Standards Act.

12
13 23. The Plaintiff, by and through his employment, was engaged in
14 commerce and/or in the production of goods for commerce as defined by 29 U.S.C.
15 207(a)(1).

16
17 24. As such, the Plaintiff is a covered employee under the Fair Labor
18 Standards Act and entitled to one and one half his hourly rate of pay for hours
19 worked in excess of forty hours per week.

20
21 **III.**

22 **UNPAID OVERTIME**
23 (Plaintiff Wilkerson)

24 25. All of the preceding paragraphs are incorporated herein by reference.

25
26 26. While employed as a Team Leader, Plaintiff Wilkerson virtually
27 always worked in excess of forty hours per week.
28

1 34. The Defendant knew that Plaintiff Wilkerson lacked the authority to
2 **ever** deviate from clearly defined company policies and without explicit
3 authorization.
4

5 35. The Defendant also knew that Plaintiff Wilkerson always worked
6 significantly more than forty hours per week.
7

8 36. The Defendant knew that Plaintiff Wilkerson lacked the authority to
9 hire and fire or otherwise discipline employees.
10

11 37. The Defendant knew that Plaintiff Wilkerson was never granted the
12 authority to exercise his discretion or engage in independent decision making while
13 working as a Team Leader.
14

15 38. Because Plaintiff Wilkerson lacked discretion and decision making
16 abilities when performing his job duties, he did not qualify under any of the
17 relevant exceptions to mandatory overtime pay as defined by Fair Labor Standards
18 Act, 29 U.S.C. 201 *et seq.*
19

20 39. The Defendant either knew or recklessly disregarded its obligation to
21 pay mandatory overtime as mandated by the Fair Labor Standards Act, 29 U.S.C.
22 201 *et seq.*
23

24 40. Because the actions of the Defendant were willful and deliberate, the
25 Plaintiff is entitled to all unpaid overtime pay due and owing him for the preceding
26 three years.
27
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V.

FACTUAL BACKGROUND
(Plaintiff Luna)

41. Plaintiff Joshua Luna began his employment on November 1, 2013 as a Customer Service Agent and was paid on an hourly basis.

42. Plaintiff Luna was promoted to the position of “Team Leader” on August 29, 2014 and remained in that capacity until approximately May 7 2015.

43. Like Plaintiff Wilkerson, Plaintiff Luna worked at the same call center with twelve other customer assistance agents who were assigned to his team.

44. While employed as a Team Leader, Plaintiff Luna was not allowed to exercise any independent decision making or discretion while performing his job duties.

45. While employed as a Team Leader, Plaintiff Luna was not allowed to hire and fire or otherwise discipline employees.

46. While employed as a Team Leader, Plaintiff Luna was paid on a salary basis for all hours worked up to and in excess of forty hours per week.

47. During his employment, Plaintiff Luna was paid an annual salary of \$28,000.00 (Twenty Eight Thousand & 00/100).

48. While employed as a Team Leader, Plaintiff Luna typically worked between fifty five and sixty hours per week.

1 49. While employed as a Team Leader, Plaintiff Luna was never paid his
2 overtime rate of one-and-one-half times his hourly rate for hours worked in excess
3 of forty per week.
4

5 50. At all times during his employment with the Defendant, Plaintiff Luna
6 remained “non-exempt” under the “Fair Labor Standards Act”, 29 U.S.C. 201 *et*
7 *seq.*, (hereinafter “FLSA”) which mandated that he be paid time-and-one-half of
8 his hourly rate for all hours worked over forty (40) per week.
9

10 51. Plaintiff Luna was an employee and subject to the Fair Labor
11 Standards Act.
12

13 52. The Defendant is an enterprise engaged in interstate commerce as
14 defined by 29 U.S.C. 206(a).
15

16 53. Upon information and belief, the Defendant is an enterprise whose
17 annual gross volume of sales made or business done is not less than \$500,000.
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19 54. As such, the Defendant is a “covered enterprise” as defined by 29
20 U.S.C. 203(s) of the Fair Labor Standards Act.
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22 55. Plaintiff Luna, by and through his employment, was engaged in
23 commerce and/or in the production of goods for commerce as defined by 29 U.S.C.
24 207(a)(1).
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VII.

WILLFULNESS

(Plaintiff Luna)

64. All of the preceding paragraphs are incorporated herein by reference.

65. The Defendant was aware that all tasks and duties performed by Plaintiff Luna were done in strict conformity with company policies and procedures.

66. The Defendant knew that Plaintiff Luna lacked the authority to ever deviate from clearly defined company policies and without explicit authority.

67. The Defendant also knew that Plaintiff Luna worked well in excess of forty hours per week.

68. The Defendant knew that Plaintiff Luna lacked the authority to hire and fire or otherwise discipline employees.

69. The Defendant knew that Plaintiff Luna lacked the authority to contract on the Defendant's behalf or incur corporate debts.

70. In addition, the Defendant failed to adequately maintain records as mandated under the FLSA.

71. Because Plaintiff Luna lacked discretion and decision making abilities when performing his job duties, he did not qualify under any of the relevant exceptions to mandatory overtime pay as defined by Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

1 80. Because the Defendant acted willfully and in the absence of a good
2 faith dispute, Plaintiff Luna is entitled to treble damages of all unpaid PTO time
3 per A.R.S. 23-355.
4

5 **IX.**

6 **FACTUAL BACKGROUND**
7 (Plaintiff Adverderada)
8

9 81. Plaintiff Ryan Adverderada began his employment in April, 2014 as
10 a Customer Service Agent and was paid on an hourly basis.

11 82. Plaintiff Adverderada was promoted to the position of “Team
12 Leader” on October 1, 2014 and remained in that capacity until April 9, 2015.
13

14 83. Like Plaintiffs Wilkerson and Luna, Plaintiff Adverderada worked at
15 the same call center with twelve other customer assistance agents who were
16 assigned to his team.
17

18 84. While employed as a Team Leader, Plaintiff Adverderada was not
19 allowed to exercise any independent decision making or discretion while
20 performing his job duties.
21

22 85. While employed as a Team Leader, Plaintiff Adverderada was not
23 allowed to hire and fire or otherwise discipline employees.
24

25 86. While employed as a Team Leader, Plaintiff Adverderada was paid
26 on a salary basis for all hours worked up to and in excess of forty hours per week.
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1 87. During his employment, Plaintiff Adverderada was paid at the hourly
2 rate of \$13.46 per hour.

3 88. While employed as a Team Leader, Plaintiff Adverderada typically
4 worked between fifty five and sixty hours per week.

5 89. While employed as a Team Leader, Plaintiff Adverderada was never
6 paid his overtime rate of one-and-one-half times his hourly rate for hours worked
7 in excess of forty per week.
8

9 90. At all times during his employment with the Defendant, Plaintiff
10 Adverderada remained “non-exempt” under the “Fair Labor Standards Act”, 29
11 U.S.C. 201 *et seq.*, (hereinafter “FLSA”) which mandated that he be paid time-and-
12 one-half of his hourly rate for all hours worked over forty (40) per week.
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15 91. Plaintiff Adverderada was an employee and subject to the Fair Labor
16 Standards Act.
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19 92. The Defendant is an enterprise engaged in interstate commerce as
20 defined by 29 U.S.C. 206(a).
21

22 93. Upon information and belief, the Defendant is an enterprise whose
23 annual gross volume of sales made or business done is not less than \$500,000.
24

25 94. As such, the Defendant is a “covered enterprise” as defined by 29
26 U.S.C. 203(s) of the Fair Labor Standards Act.
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1 95. Plaintiff Adverderada, by and through his employment, was engaged
2 in commerce and/or in the production of goods for commerce as defined by 29
3 U.S.C. 207(a)(1).
4

5 96. As such, Plaintiff Adverderada is a covered employee under the Fair
6 Labor Standards Act and entitled to one and one half her hourly rate of pay for
7 hours worked in excess of forty hours per week.
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9 97. The Defendant also offered various benefits to its employees such as
10 paid time off and vacation time (“PTO time”).
11

12 98. During the course of his employment, Plaintiff Adverderada earned a
13 significant number of hours of PTO time.
14

15 99. When Plaintiff Adverderada attempted to use his PTO time, the
16 Defendant consistently refused his requests.
17

18 100. When Plaintiff Adverderada ended his employment, the Defendant
19 refused to compensate him for his accumulated PTO time.
20

21 **X.**

22 **UNPAID OVERTIME**
23 **(Plaintiff Adverderada)**

24 101. All of the preceding paragraphs are incorporated herein by
25 reference.
26

27 102. While employed as a Team Leader, Plaintiff Adverderada virtually
28 always worked in excess of forty hours per week..

1 110. The Defendant knew that Plaintiff Adverderada lacked the authority
2 to **ever** deviate from clearly defined company policies and without explicit
3 authority.
4

5 111. The Defendant also knew that Plaintiff Adverderada worked well in
6 excess of forty hours per week.
7

8 112. The Defendant knew that Plaintiff Adverderada lacked the authority
9 to hire and fire or otherwise discipline employees.
10

11 113. The Defendant knew that Plaintiff Adverderada lacked the authority
12 to contract on the Defendant's behalf or incur corporate debts.
13

14 114. In addition, the Defendant failed to adequately maintain records as
15 mandated under the FLSA.
16

17 115. Because Plaintiff Adverderada lacked discretion and decision
18 making abilities when performing his job duties, he did not qualify under any of
19 the relevant exceptions to mandatory overtime pay as defined by Fair Labor
20 Standards Act, 29 U.S.C. 201 *et seq.*
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22 116. The Defendant either knew or recklessly disregarded its obligation
23 to pay mandatory overtime as mandated by the Fair Labor Standards Act, 29
24 U.S.C. 201 *et seq.*
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1 117. Because the actions of the Defendant were willful and deliberate, the
2 Plaintiff is entitled to all unpaid overtime pay due and owing him for the preceding
3 three years.
4

5 **XII.**

6 **UNPAID WAGES**
7 (Plaintiff Adverderado)
8

9 118. All of the preceding paragraphs are incorporated herein by reference.

10 119. Pursuant to the terms and conditions of his employment, Plaintiff
11 Adverderada accumulated in excess of one hundred hours of PTO time.
12

13 120. When Plaintiff Adverderada ended his employment in April 2015,
14 the Defendant knew that he had earned a significant number of PTO hours.
15

16 121. Nonetheless, the Defendant refused to ever compensate Plaintiff
17 Adverderada for his earned PTO time.
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19 122. The actions of the Defendant constitute a violation A.R.S. 23-355

20 123. Because the Defendant acted willfully and in the absence of a good
21 faith dispute, Plaintiff Adverderada is entitled to treble damages of all unpaid PTO
22 time per A.R.S. 23-355.
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1 **WHEREFORE**, Plaintiff Wilkerson, Luna and Adverderada pray for judgment
2 against the Defendant as follows:

3 1. For all unpaid overtime wages due and owing to them pursuant to the
4 Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* in an amount to be proven at trial;

5 2. For a finding that the Defendant's actions were "willful" as defined by
6 29 U.S.C. 201 *et seq* of the Fair Labor Standards Act and subject to a three year
7 look back period.
8

9 3. For the Plaintiffs' reasonable attorney's fees and costs in bringing this
10 matter; and
11

12 4. For such other relief as the Court may deem just and proper.
13

14 5. Pursuant to the seventh amendment to the Constitution of the United
15 States of America, Plaintiffs are entitled to, and demands, a trial by jury.
16

17 **IN ADDITION**, Plaintiffs Luna and Adverderada pray for judgment against the
18 Defendant as follows:
19

20 1. For all unpaid comp time and earned benefits due and owing them.
21

22 2. For treble damages for all unpaid comp time and earned benefits
23 pursuant to A.R.S. 23-355
24

25 **RESPECTFULLY** submitted this 21st day of August, 2015.
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27
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By: /s/ Christopher J. Piekarski
Christopher J. Piekarski